No. 803

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CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the State of Ohio

No. 29306

THE SCOTT REALTY COMPANY,
Plaintiff-Appellant,

vs.

THE LASALLE & KOCH COMPANY,
Defendant-Appellee.

Appeal from the Decision of the Court of Appeals of the Sixth Judicial District of Ohio, Lucas County

PROCEEDINGS IN THE SUPREME COURT OF THE STATE OF OHIO

Vol. III—Pages 928 to 938

EFFLER & EASTMAN,
900 Home Bank Bldg., Toledo, Ohio,
FRASER, EFFLER, SHUMAKER & WINN,
700 Home Bank Bldg., Toledo, Ohio,
Attorneys for Appellant.

BROWN & SANGER,
1007-16 Nicholas Bldg.,
Toledo, Ohio,
MARSHALL, MELHORN, WALL & BLOCH,
1434 Nicholas Bldg.,
Toledo, Ohio,
Attorneys for Appellee.

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1434 Nicholas Bldg.,
Toledo, Ohio,
Attorneys for Appellee.

IN THE

Supreme Court of the State of Ohio

No. 29306
C. A. No. 3865
C. P. No. 155490

The Scott Realty Company,

Plaintiff-Appellant,

vs.

The Lasalle & Koch Company,

Defendant-Appellee.

NOTICE OF APPEAL

(Filed July 22, 1942)

Now comes The Scott Realty Company, plaintiff-appellant herein, being plaintiff-appellee in the Court of Appeals of Lucas County, Ohio, and hereby gives written notice that it appeals on questions of law to the Supreme Court of Ohio from the orders, judgment and decree of said Court of Appeals of Lucas County, Ohio, entered in this cause on the 3rd day of July, 1942, by which said Court of Appeals ruled adversely to said plaintiff-appellant.

Said appeal is on questions of law and is taken to the Supreme Court (a) in a case involving a debatable consti-

tutional question, and (b) on condition that a motion to certify be allowed by the Supreme Court.

Similar notice of appeal is being filed in the Court of Appeals of Lucas County, Ohio, on the 22nd day of July, 1942.

The Scott Realty Company,
By Effler & Eastman and
Fraser, Effler, Shumaker & Winn,
Its Attorneys.

MOTION TO CERTIFY THE RECORD

(Filed July 31, 1942)

Now comes The Scott Realty Company, the undersigned plaintiff-appellant herein, and represents to the court that at the May, 1942, term of the Court of Appeals of Lucas County, Ohio, namely, on the 3rd day of July, 1942, in an action pending in said court (numbered 3865 on the docket of said court), wherein the undersigned plaintiff-appellant was plaintiff-appellee, and defendant-appellee, The Lasalle & Koch Company, was defendant-appellant, said court rendered a judgment in favor of the defendant-appellee, The Lasalle & Koch Company, and against the undersigned plaintiff-appellant.

This appellant further represents and shows to the court that it has heretofore filed notice of appeal in the Court of Appeals, and a similar notice in this court as required by law, and further, that said case is one of public

and great general interest, and that prejudicial error has been committed in the proceeding had in the Court of Appeals, and, by reason thereof, this Honorable Court has jurisdiction to, and ought to, review said judgment.

Wherefore, appellant makes application for an order directing said Court of Appeals to certify its record to the Supreme Court.

The Scott Realty Company,
By Effler & Eastman, and
Fraser, Effler, Shumaker & Winn,
Its Attorneys.

(H. W. Fraser)

ASSIGNMENT OF ERRORS

(Filed August 6, 1942)

The Scott Realty Company, appellant, for its assignment of errors herein says that the judgment entered by the Court of Appeals in the above entitled cause on July 3, 1942, is erroneous and against the just rights of the appellant in each of the following respects:

(1) The Court of Appeals erred in finding and adjudging in favor of appellee and against appellant;
(2) The Court of Appeals erred in failing and refusing to make findings or conclusions of fact, as requested in writing by appellant;
(3) The Court of Appeals erred in refusing to answer the interrogatories submitted in writing by appellant;
(4) The judgment of the Court of Appeals is contrary to law;

(5) The findings, orders, judgment and decree of the Court of Appeals are not sustained by any evidence;

(6) The findings, orders, judgment and decree of the Court of Appeals are not sustained by sufficient evidence;

(7) The Court of Appeals erred in finding that said arbitration, valuation or appraisal, and the return made thereon, were valid and binding and should be sustained;

(8) The Court of Appeals erred in failing to consider the second cause of action of the second amended petition and the evidence as to the fair market value of said real estate;

(9) The findings, orders, judgment and decree of the Court of Appeals, in sustaining said award, violate appellant's right to due process of law under Article I of Section 16 of the Ohio Bill of Rights and under Section 1 of the Fourteenth Amendment to the Constitution of the United States in that:

(a) Appellant was denied a hearing before said arbitrators;

(b) The errors of the Court of Appeals are so gross and obvious as to amount to arbitrary and capricious exercise of power.

As a result of the errors aforesaid, the findings, orders, judgment and decree of said Court of Appeals deprived this plaintiff and appellant of substantial justice in this cause and of its constitutional rights aforesaid; and, by reason thereof, the plaintiff and appellant is entitled to have said findings, orders, judgment and decree vacated and a final judgment entered in said cause in its favor, and

to be restored to all things lost by reason of said erroneous findings, orders, judgment and decree.

The Scott Realty Company,
By Effler & Eastman,
9th Floor, Home Bank Bldg.,
Toledo, Ohio,
and
Fraser, Effler, Shumaker & Winn,
7th Floor, Home Bank Bldg.,
Toledo, Ohio,
Attorneys for Plaintiff and Appellant.

The defendant and appellee acknowledges service of copy of the foregoing assignment of errors in the Supreme Court of Ohio this 5th day of August, 1942.

The Lasalle & Koch Company,
By Marshall, Melhorn, Wall & Bloch,
1434 Nicholas Bldg., Toledo, Ohio,
Brown & Sanger,
1007-16 Nicholas Bldg., Toledo, Ohio,
J. I. O'Connor,
810 Edison Bldg., Toledo, Ohio,
Attorneys for Defendant and Appellee.

MOTION TO DISMISS APPEAL AS OF RIGHT

(Filed August 22, 1942)

Now comes The Lasalle & Koch Company, appellee herein, and moves this court for an order dismissing the appeal as of right filed by the appellant, The Scott Realty Company, for the following reasons:

1. That no debatable constitutional question is involved in said cause.
2. That no question arising under the Constitution of the United States or the Constitution of the State of Ohio is involved in said cause.
3. That said alleged constitutional questions were not raised in either the Court of Common Pleas of Lucas County or the Court of Appeals of Lucas County, from whence this case is appealed, and that no application of said constitutions, or either of them, was asked for in said courts, said appellant, The Scott Realty Company, having first complained of having been deprived of its property without due process of law in the assignment of errors filed in this court.

J. I. O'Connor,
Brown & Sanger,
Marshall, Melhorn, Wall & Bloch,
Attorneys for The Lasalle & Koch Company, Appellee.

IN THE SUPREME COURT OF OHIO

January Term, 1942

DOCKET ENTRIES

Appeal from the Court of Appeals of Lucas County

MOTION FOR AN ORDER DIRECTING THE COURT OF APPEALS OF LUCAS COUNTY TO CERTIFY ITS RECORD

MEMORANDA OF PLEADINGS, &c, FILED, WRITS ISSUED, &c.

July 22, 1942. Notice of appeal filed 7/31/42. Proof of service filed.

July 31, 1942. Motion for an order to certify record and proof of service filed.

Aug. 6, 1942. Assignments of error and proof of service filed.

Aug. 7, 1942. Application for an extension of time to file brief on motion filed.

Aug. 7, 1942. Entry extending time for filing appellant's brief to Aug. 15, 1942. Carl V. Weygandt, C. J. J. 36-691.

Aug. 15, 1942. Entry extending time for filing appellant's brief to Aug. 17, 1942. Edward C. Turner, J. J. 36-694.

Aug. 17, 1942. Appellant's printed brief and proof of service filed.

Aug. 18, 1942. Application to dispense with printing exhibits and proof of service filed.

Aug. 18, 1942. Entry dispensing with the printing of exhibits herein approved. Charles B. Zimmerman, J. J. 36-696.

Aug. 20, 1942. Application for leave to file papers and docket case on appeal as of right.

Aug. 20, 1942. Entry granting application for leave to docket case and file papers approved. Roy H. Williams, J. J. 36-697.

Aug. 20, 1942. Court of Appeals transcript, original papers and bill of exceptions (7 volumes) filed.

Aug. 20, 1942. Cause docketed on appeal as of right.

Aug. 20, 1942. Printed record filed (2 vol.).

Aug. 22, 1942. Motion by appellee to dismiss appeal as of right and proof of service filed.

Oct. 3, 1942. Printer's receipted bill filed.

Oct. 13, 1942. Appellee's printed brief (2 parts) and proof of service filed.

Nov. 19, 1942. Appellant's printed reply brief filed and proof of service filed.

Dec. 16, 1942. Motion for an order directing the Court of Appeals of Lucas County to certify its record overruled. J. 37-66.

Dec. 16, 1942. Motion by appellee to dismiss appeal as of right sustained. J. 37-66.

Dec. 16, 1942. Dismissed, no debatable constitutional question involved. J. 37-73.

Dec. 22, 1942. Notified application for rehearing to be filed.

Dec. 30, 1942. Application for rehearing filed.
Jan. 6, 1943. Rehearing denied. J. 37-91.
Jan. 6, 1943. Certified copy of entry sent clerk.
Jan. 6, 1943. Mandate issued.
Jan. 14, 1943. Original papers and B. E. sent to clerk.

JOURNAL ENTRIES

Friday, August 7, 1942. Upon application of appellant, and for good cause shown, it is ordered that the time for filing brief of appellant on motion to certify herein be, and the same hereby is, extended to August 15, 1942. J. 36-691.

Saturday, August 15, 1942. Upon application of appellant, and for good cause shown, it is ordered that the time for filing appellant's brief on motion herein be, and the same hereby is, extended to August 17, 1942. J. 36-694.

Tuesday, August 18, 1942. Upon application of The Scott Realty Company, plaintiff-appellant, and for good cause shown, it is ordered that the printing of the exhibits be dispensed with insofar as the printed record is concerned; and that reference shall be made to the original record on file with the clerk of this court in all matters concerning such exhibits. J. 36-696.

Thursday, August 20, 1942. This cause coming on to be heard on the application of the appellant herein for an order directing the clerk of the Supreme Court of Ohio to file out of rule transcript of docket and journal entries,

original papers, bill of exceptions and exhibits in the within cause and docket the same, the court, being fully advised in the premises, finds said application well taken and grants the same.

It is therefore ordered by this court that the clerk file said transcript of docket and journal entries, original papers, bill of exceptions and exhibits, and docket the within cause according to law. J. 36-697.

Wednesday, December 16, 1942. Motion for an order directing the Court of Appeals of Lucas County to certify its record.

It is ordered by the court that this motion be, and the same hereby is, overruled. J. 37-66.

Wednesday, December 16, 1942. Motion by appellee to dismiss appeal filed as of right.

It is ordered by the court that this motion be, and the same hereby is, sustained. J. 37-66.

Wednesday, December 16, 1942. Appeal from the Court of Appeals of Lucas County.

This cause came on to be heard upon the transcript of the record of the Court of Appeals of Lucas County, upon the motion of the appellee to dismiss the appeal, filed as of right herein, and was argued by the counsel.

On consideration whereof, it is ordered and adjudged that said appeal be, and the same hereby is, dismissed for the reason no debatable constitutional question is involved in said cause.

It is further ordered and adjudged that the appellee recover from the appellant its costs herein expended, taxed at $.....

Ordered, that a special mandate be sent the Court of Appeals of Lucas County, to carry this judgment into execution. J. 37-73.

Wednesday, January 6, 1943. Upon consideration of the application for rehearing herein, it is ordered by the court that rehearing be, and the same hereby is, denied. J. 37-91.

CERTIFICATE

I, Seba H. Miller, clerk of the Supreme Court of the State of Ohio, do hereby certify that the foregoing notice of appeal, motion to certify the record, assignment of errors and motion to dismiss appeal as of right are truly taken and correctly copied from the originals on file in this office; and that the foregoing transcript of the docket and journal entries of the Supreme Court of Ohio are truly taken and correctly copied from the records of said Supreme Court in said cause number 29306, to-wit: from the journals and minute book of said Supreme Court of Ohio.

In Witness Whereof, I have hereunto set my hand and affixed hereto the seal of the Supreme Court of Ohio, at Columbus, Ohio, this 5th day of February, A. D. 1943.

Seba H. Miller,

(Seal) Clerk of the Supreme Court of Ohio.